

GEOFFREY L. WARREN

IBLA 82-975

Decided August 11, 1982

Appeal from decision of Oregon State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. OR MC 23945 through OR MC 23951, OR MC 30134.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of an unpatented mining claim must file a notice of intention to hold the claim or evidence of assessment work performed on the claim on or before Dec. 30 of each calendar year. The evidence of assessment work or the notice of intention to hold the claim must be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

APPEARANCES: Geoffrey L. Warren, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Geoffrey L. Warren appeals the Oregon State Office, Bureau of Land Management (BLM), decision of May 10, 1982, which declared the unpatented

Silver Scott #1 and #2, Silver Scott Extension #1, #2, and #3, Silver Scott #4, Silver Scott Copper lode mining claims, OR MC 23945 through OR MC 23951, and Silver Scott #4 lode mining claim (relocated), OR MC 30134, abandoned and void because the proof of labor for 1981 was not filed with BLM on or before December 30, 1981, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1. The proof of labor was received December 31, 1981, at 7:30 a.m.

Appellant states the proof of labor was mailed December 29, 1981, from Spokane, Washington, with assurance from the Post Office that the envelope would be delivered to the BLM Post Office Box in Portland on December 30. Appellant argues that the envelope must have been placed in the BLM Post Office Box December 30 to be received by BLM at 7:30 a.m., December 31, as no flights carrying mail from Spokane to Portland after December 30 would have placed the letter in Portland by 7:30 a.m., December 31. Appellant also contends BLM reduces the time for filing by restricting the time for acceptance of filings to 4 p.m., December 30, so that receipt at 7:30 a.m., December 31 should be allowed under the grace period set forth in 43 CFR 4.401. Appellant asserts that he had no intention of abandoning the claims.

[1] Section 314 of FLPMA and the implementing regulations, 43 CFR 3833.2-1 and 3833.4(a), require that evidence of assessment work for each year be filed both in the office where the location notice is recorded and in the proper office of BLM on or before December 30 of each calendar year, under penalty of a conclusive presumption that the claims have been abandoned if the documents are not timely or properly filed.

Although the evidence shows that the document was actually mailed as claimed, by certified mail, the regulations define "file" to mean "being received and date stamped by the proper BLM office." 43 CFR 1821.2-2(f); 43 CFR 3833.1-2(a). Thus, where the delay in delivery of the envelope containing the proof of labor to BLM is caused by the Postal Service, that fact would not excuse appellant's failure to comply with the cited regulations and FLPMA. Regina McMahon, 56 IBLA 372 (1981); Glenn D. Graham, 55 IBLA 39 (1981); James E. Yates, 42 IBLA 391 (1979). The Board has repeatedly held that a mining claimant, having chosen the Postal Service as his means of delivery, must accept the responsibility and bear the consequences of loss or untimely delivery of his filing. Regina McMahon, *supra*; Edward P. Murphy, 48 IBLA 211 (1980); Everett Yount, 46 IBLA 74 (1980). Filing is accomplished only when a document is delivered to and received by the proper BLM office. Depositing a document in the mails does not constitute filing. 43 CFR 1821.2-2(f). The filing requirements of section 314, FLPMA, are mandatory, not discretionary. Failure to comply is conclusively deemed to constitute an abandonment of the claim by the owner and renders the claim void. Enterprise Mines, Inc., 58 IBLA 372 (1981); Fahey Group Mines, Inc., 58 IBLA 88 (1981). Congress imposed that consequence in enacting FLPMA. The responsibility for complying with the recordation requirements rests with appellant. This Board has no authority to excuse failure to comply with the statutory

requirements of recordation or to afford any relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981). 1/

Appellant may wish to consult with BLM about the possibility of relocating these claims.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques  
Administrative Judge

We concur:

Gail M. Frazier  
Administrative Judge

C. Randall Grant, Jr.  
Administrative Judge

---

1/ The grace period referred to by appellant in his statement of reasons for appeal applies to documents tendered in connection with appeals from BLM decisions. 43 CFR 4.401(a). Although the regulations governing time limits for filing documents with BLM authorize officials to allow a late filing under some circumstances, this waiver of a late filing is precluded where the law does not allow it as is the case with section 314 of FLPMA. 43 CFR 1821.2-2(g)(1).

